

proposed by the Department or Component; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (b)(1) of this subsection to the Department or Component by any labor organization—

(i) The Department or Component will consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The Department or Component will provide the labor organization a written statement of the reasons for taking the final action.

(c) Section 9901.913(b) does not apply where the proposed change is bargained at the national level or where continuing collaboration procedures under § 9901.106 apply.

(d) Nothing in this section precludes the Department or the Component from seeking views and recommendations from labor organizations having exclusive representation within the Department or Component which do not have national consultation rights.

(e) Nothing in this section will be construed to limit the right of the agency or exclusive representative to engage in collective bargaining.

#### **§ 9901.914 Representation rights and duties.**

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit will be given the opportunity to be represented at—

(i) Any formal discussion between a Department management official(s) and bargaining unit employees, the purpose of which is to discuss and/or announce new or substantially changed personnel policies, practices, or working conditions. This right does not apply to meetings between a management official(s) and bargaining unit employees for the purpose of discussing operational matters where any discussion of personnel policies, practices or working conditions—

(A) Constitutes a reiteration or application of existing personnel

policies, practices, or working conditions;

(B) Is incidental or otherwise peripheral to the announced purpose of the meeting; or

(C) Does not result in an announcement of a change to, or a promise to change, an existing personnel policy(s), practice(s), or working condition(s);

(ii) Any discussion between one or more Department representatives and one or more bargaining unit employees concerning any grievance filed under the negotiated grievance procedure;

(iii) Any examination of a bargaining unit employee by a representative of the Department in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests such representation; or

(iv) Any discussion between one or more Department representatives and one or more bargaining unit employees in connection with a formal complaint of discrimination only if the employee(s), in his or her sole and exclusive discretion, requests such representation.

(3) Bargaining unit employees will be informed annually of their rights under paragraph (a)(2)(iii) of this section.

(4) Employee representatives employed by the Department are subject to the same expectations regarding conduct as any other employee, whether they are serving in their representative capacity or not.

(5) Except in the case of grievance procedures negotiated under this subpart, the rights of an exclusive representative under this section may not be construed to preclude an employee from—

(i) Being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance or appeal action; or

(ii) Exercising grievance or appellate rights established by law, rule, or regulation.

(b) The duty of the Secretary or appropriate Component(s) of the Department and an exclusive representative to negotiate in good faith under paragraph (a) of this section includes the obligation—

(1) To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) If agreement is reached, to execute on the request of any party to the negotiation, a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement; and

(5) In the case of the Department or appropriate Component(s) of the Department, to furnish information to an exclusive representative, or its authorized representative, when—

(i) Such information exists, is normally maintained in the regular course of business, and is reasonably available;

(ii) The exclusive representative has requested such information and demonstrated a particularized need for the information in order to perform its representational functions in grievance or unfair labor practice proceedings, or in negotiations; and

(iii) Disclosure is not prohibited by law.

(c) Disclosure of information in paragraph (b)(5) of this section does not include the following:

(1) Disclosure prohibited by law or regulations, including, but not limited to, the regulations in this part, Governmentwide rules and regulations, Departmental implementing issuances and other policies and regulations, and Executive orders;

(2) Disclosure of information if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information;

(3) Internal Departmental guidance, counsel, advice, or training for managers and supervisors relating to collective bargaining;

(4) Any disclosures where an authorized official has determined that disclosure would compromise the Department's mission, security, or employee safety; and

(5) Personal addresses, personal telephone numbers, personal e-mail addresses, or any other information not related to an employee's work.

(d)(1) An agreement between the Department or appropriate Component(s) of the Department and the exclusive representative is subject to approval by the Secretary.

(2) The Secretary will approve the agreement within 30 days after the date the agreement is executed if the agreement is in accordance with the provisions of these regulations and any

other applicable law, rule, regulation, issuance, or implementing issuance.

(3) If the Secretary does not approve or disapprove the agreement within the 30-day period specified in paragraph (d)(2) of this section, the agreement will take effect and is binding on the Department or Component(s), as appropriate, and the exclusive representative, but only to the extent it is consistent with Federal law, Presidential issuance (*e.g.*, Executive order), Governmentwide regulations, issuances and implementing issuances, or the regulations in this part.

(4) A local agreement subject to a national or other controlling agreement at a higher level may be approved under the procedures of the controlling agreement or, if none, under Departmental regulations. Bargaining will be at the level of recognition except where delegated.

(5) Provisions in existing collective bargaining agreements are unenforceable if they are contrary to Federal law, Presidential issuance (*e.g.*, Executive order), the regulations in this part, or implementing issuances. Provisions in existing collective bargaining agreements that are inconsistent with Governmentwide regulations or issuances (other than implementing issuances), are unenforceable upon expiration, extension, renewal, or renegotiation of the collective bargaining agreement, whichever occurs first.

#### **§ 9901.915 Allotments to representatives.**

(a) If the Department has received from an employee in an appropriate unit a properly executed written or electronic assignment which authorizes the Department to deduct from the pay of the employee amounts for the payment of regular and periodic dues and other financial assessments of the exclusive representative of the unit, the Department will honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment will be made at no cost to the exclusive representative or the employee. Except as provided under paragraph (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under paragraph (a) of this section for the deduction of dues with respect to any employee terminates when—

(1) The agreement between the Department or Department Component and the exclusive representative involved ceases to be applicable to the employee; or

(2) The employee is suspended or expelled from membership by the exclusive representative.

(c)(1) Subject to paragraph (c)(2) of this section, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in the Department have membership in the labor organization, the Authority will investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the Department has a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(i) The provisions of paragraph (c)(1) of this section do not apply in the case of any appropriate unit for which there is an exclusive representative.

(ii) Any agreement under paragraph (c)(1) of this section between a labor organization and the Department or Department Component with respect to an appropriate unit becomes null and void upon the certification of an exclusive representative of the unit.

#### **§ 9901.916 Unfair labor practices.**

(a) For the purpose of this subpart, it is an unfair labor practice for the Department—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities on an impartial basis to other labor organizations having equivalent status;

(4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information or testimony under this subpart;

(5) To refuse, as determined by the Board, to negotiate in good faith or to consult with a labor organization, as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions, as required by this subpart;

(7) To enforce any issuance (other than an implementing issuance), or Governmentwide regulation, which is in conflict with an applicable collective

bargaining agreement if the agreement was in effect before the issuance or regulation was prescribed.

(8) To fail or refuse otherwise to comply with any provision of this subpart.

(b) For the purpose of this subpart, it is an unfair labor practice for a labor organization—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this subpart;

(3) To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) To discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) To refuse, as determined by the Board, to negotiate in good faith or to consult with the Department as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions as required by this subpart;

(7)(i) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of the Department in a labor-management dispute if such picketing interferes with an agency's operations; or

(ii) To condone any activity described in paragraph (b)(7)(i) of this section by failing to take action to prevent or stop such activity; or

(8) To otherwise fail or refuse to comply with any provision of this subpart.

(c) Notwithstanding paragraph (b)(7) of this section, informational picketing which does not interfere with the Department's operations will not be considered an unfair labor practice.

(d) For the purpose of this subpart, it is an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by the labor organization, except for failure to meet reasonable occupational standards uniformly required for admission or to

tender dues uniformly required as a condition of acquiring and retaining membership. This does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this subpart.

(e) The Board will not consider any allegation of an unfair labor practice filed more than 6 months after it occurred, unless the Board determines, pursuant to its regulations, that there is good cause for the late filing.

(f) Unfair labor practice issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except where an employee has an option of using the negotiated grievance procedure or an appeals procedure in connection with an adverse action, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(g) The expression of any personal view, argument, opinion, or the making of any statement which publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election, corrects the record with respect to any false or misleading statement made by any person, or informs employees of the Government's policy relating to labor-management relations and representation, will not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions—

- (1) Constitute an unfair labor practice under any provision of this subpart; or
- (2) Constitute grounds for the setting aside of any election conducted under any provision of this subpart.

#### **§ 9901.917 Duty to bargain and consult.**

(a) The Department or appropriate Component(s) of the Department and any exclusive representative in any appropriate unit in the Department, through appropriate representatives, will meet and negotiate in good faith as provided by this subpart for the purpose of arriving at a collective bargaining agreement. In addition, the Department or appropriate Component(s) of the Department and the exclusive representative may determine appropriate techniques, consistent with the operational rules of the Board, to assist in any negotiation.

(b) If bargaining over an initial collective bargaining agreement or any successor agreement is not completed within 90 days after such bargaining

begins, the parties may mutually agree to continue bargaining, or either party may refer the matter to the Board for resolution in accordance with procedures established by the Board. At any time prior to going to the Board, either party may refer the matter to FMCS for assistance.

(c) If the parties bargain during the term of an existing collective bargaining agreement, or in the absence of a collective bargaining agreement, over a proposed change affecting bargaining unit employees' conditions of employment, and no agreement is reached within 30 days after such bargaining begins, the parties may mutually agree to continue bargaining, or either party may refer the matter to the Board for resolution in accordance with procedures established by the Board. Either party may refer the matter to FMCS for assistance at any time.

(d)(1) Management may not bargain over any matters that are inconsistent with law or the regulations in this part, Governmentwide rules and regulations, issuances and implementing issuances, or Executive orders.

(2) Except as otherwise provided in § 9901.910(d), management has no obligation to bargain or consult over a change to a condition of employment unless the change is otherwise negotiable pursuant to these regulations and is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change.

(3) Nothing in paragraphs (b) or (c) of this section prevents management from exercising the rights enumerated in § 9901.910.

(e) If a management official involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Board in accordance with procedures established by the Board.

#### **§ 9901.918 Multi-unit bargaining.**

(a) Negotiations can occur at geographical or organizational levels within DoD or a Component with the local exclusive representatives impacted by the proposed change.

(b) Any such negotiations will—

(1) Be binding on all parties afforded the opportunity to bargain with representatives of DoD or the Component;

(2) Supersede all conflicting provisions of applicable collective bargaining agreements of the labor organization(s) affected by the negotiations; and

(3) Be subject to impasse resolution by the Board under procedures prescribed by the Board. In resolving impasses, the Board will ensure that agreement provisions are consistent with regard to all similarly situated employees. The determination as to which organizations are covered under multi-unit bargaining is not subject to review by the Board.

(c) When agreement is reached under this section, individual bargaining units cannot opt out of or veto the agreement.

(d) Any party may request the services of FMCS to assist with these negotiations.

(e) Labor organizations may request multi-unit bargaining, as appropriate. The Secretary has sole and exclusive authority to grant the labor organizations' request.

(f) The Department will prescribe implementing issuances on the procedures and constraints associated with multi-unit bargaining.

#### **§ 9901.919 Collective bargaining above the level of recognition.**

(a) Negotiations can occur at the DoD or Component level with labor organization(s) at an organizational level above the level of exclusive recognition. The decision to negotiate at a level above the level of recognition as well as the unions involved, is within the sole and exclusive discretion of the Secretary to determine and will not be subject to review.

(b) Any such agreement reached in these negotiations will—

(1) Be binding on all subordinate bargaining units of the labor organization(s) afforded the opportunity to bargain above the level of recognition, and on DoD and its Components, without regard to levels of recognition;

(2) Supersede all conflicting provisions of other collective bargaining agreements of the labor organization(s), including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;

(3) Not be subject to further negotiations with the labor organizations for any purpose, including bargaining at the level of recognition, except as the Secretary may decide, in his or her sole and exclusive discretion; and

(4) Be subject to review by the Board only to the extent provided by this subpart.

(c) When agreement is reached under this section, individual labor organizations or bargaining units cannot opt out of or veto the agreement.

(d) Negotiations will be subject to impasse resolution by the Board under

procedures prescribed by the Board. In resolving impasses, the Board will ensure that agreement provisions are consistent with regard to all similarly situated employees. The determination as to which organizations are covered under national level bargaining is not subject to review by the Board;

(e) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this section. Where National Guard employees are impacted, negotiations at the level of recognition are authorized.

(f) The Secretary may require and a labor organization or organizations may request bargaining above the level of recognition, as appropriate. The Secretary has sole and exclusive authority to grant such requests; and

(g) The Department will prescribe implementing issuances on the procedures and constraints associated with collective bargaining above the level of recognition.

#### **§ 9901.920 Negotiation impasses.**

(a) If the Department and exclusive representative are unable to reach an agreement under §§ 9901.905, 9901.914, 9901.917, 9901.918, or 9901.919, either party may submit the disputed issues to the Board for resolution.

(b) The Board may take whatever action is necessary and not inconsistent with this subpart to resolve the impasse, to include use of settlement efforts.

(c) Pursuant to §§ 9901.907 and 9901.926, the Board's regulations will provide for a single, integrated process to address all matters associated with a negotiations dispute, including unfair labor practices, negotiability disputes, and negotiation impasses.

(d) Notice of any final action of the Board under this section will be promptly served upon the parties. The action will be binding on such parties during the term of the agreement, unless the parties agree otherwise.

#### **§ 9901.921 Standards of conduct for labor organizations.**

Standards of conduct for labor organizations are those prescribed under 5 U.S.C. 7120, which is not modified.

#### **§ 9901.922 Grievance procedures.**

(a)(1) Except as provided in paragraph (a)(2) of this section, any collective bargaining agreement will provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in paragraphs (e), (f) and (h) of this section, the procedures will be the exclusive procedures for grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from

the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in paragraph (a) of this section will be fair and simple, provide for expeditious processing, and include procedures that—

(i) Assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) Assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to binding arbitration, which may be invoked by either the exclusive representative or the Department.

(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (b)(1)(iii) of this section will, to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 U.S.C. 1221(c) with respect to the Merit Systems Protection Board and order the Department to take any disciplinary action identified under 5 U.S.C. 1215(a)(3) that is otherwise within the authority of the Department to take.

(3) Any employee who is the subject of any disciplinary action ordered under paragraph (b)(2) of this section may appeal such action to the same extent and in the same manner as if the Department had taken the disciplinary action absent arbitration.

(c) The preceding paragraphs of this section do not apply with respect to any matter concerning—

(1) Any claimed violation of 5 U.S.C. chapter 73, subchapter III (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) Any examination, certification, or appointment;

(4) A removal taken under mandatory removal authority as defined in § 9901.712;

(5) Any subject not within the definition of *grievance* in § 9901.903 (e.g., the classification or pay of any position), except for an adverse action under applicable authority, including subpart G of this part, which is not otherwise excluded by paragraph (c) of this section; or

(6) A suspension or removal taken under 5 U.S.C. 7532.

(d) To the extent not already excluded by existing collective bargaining agreements, the exclusions contained in paragraph (c) of this section apply upon the effective date of this subpart, as determined under § 9901.102(b)(1).

(e)(1) An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under the applicable statutory procedures, or the negotiated procedure, but not both.

(2) An employee is deemed to have exercised his or her option under paragraph (e)(1) of this section to raise the matter under the applicable statutory procedures, or the negotiated procedure, at such time as the employee timely initiates an action under the applicable statutory or regulatory procedure or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(3) Selection of the negotiated grievance procedure in no manner prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision pursuant to 5 U.S.C. 7702 in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(f)(1) For appealable matters, except for mandatory removal offenses under § 9901.712, an aggrieved employee may raise the matter under an applicable appellate procedure or under the negotiated grievance procedure, but not both. An employee will be deemed to have exercised his or her option under this section when the employee timely files an appeal under the applicable appellate procedures or a grievance in accordance with the provisions of the parties' negotiated grievance procedure, whichever occurs first.

(2) An arbitrator hearing a matter appealable under 5 U.S.C. 7701 or subpart H of this part is bound by the applicable provisions of this part.

(g)(1) This paragraph applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which paragraph (e) of this section applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (g)(1) of this

section may elect not more than one of the procedures described in paragraph (g)(3) of this section with respect thereto. A determination as to whether a particular procedure for seeking a remedy has been elected will be made as set forth under paragraph (g)(4) of this section.

(3) The procedures for seeking remedies described in this paragraph are as follows:

(i) An appeal under 5 U.S.C. 7701 or under subpart H of this part;

(ii) A negotiated grievance under this section; and

(iii) Corrective action under 5 U.S.C. chapter 12, subchapters II and III.

(4) For the purpose of this paragraph, an employee is considered to have elected one of the following, whichever election occurs first:

(i) The procedure described in paragraph (g)(3)(i) of this section if such employee has timely filed a notice of appeal under the applicable appellate procedures;

(ii) The procedure described in paragraph (g)(3)(ii) of this section if such employee has timely filed a grievance in writing in accordance with the provisions of the parties' negotiated procedure; or

(iii) The procedure described in paragraph (g)(3)(iii) of this section if such employee has sought corrective action from the Office of Special Counsel by making an allegation under 5 U.S.C. 1214(a)(1).

(h)(1) An employee may challenge a rating of record issued under subpart D of this part, through either the negotiated grievance procedure or an administrative reconsideration process under § 9901.409(h), but not both, so long as the rating of record has not been raised in connection with an appeal under the provisions of 5 U.S.C. 7701 or subpart H of this part. Once an employee raises an issue on his or her rating of record issue in an appeal under 5 U.S.C. 7701 or subpart H of this part, any pending grievance, arbitration, or request for administrative reconsideration under § 9901.409(h), will be dismissed with prejudice.

(2) Final decision authority in the negotiated grievance procedure may rest with—

(i) An independent arbitrator; or

(ii) A panel consisting of an independent arbitrator, a union representative, and a management representative.

(3) An arbitrator or panel may not conduct an independent evaluation of the employee's performance, determine the appropriate share payout, or otherwise substitute his or her judgment

for that of the supervisor or pay pool panel.

(i) An arbitrator or panel hearing a matter under this subpart is bound by all applicable laws, rules, regulations, including applicable provisions of this part, issuances, and implementing issuances.

#### **§ 9901.923 Exceptions to arbitration awards.**

(a) Either party to arbitration under this subpart may file with the Board an exception to any arbitrator's award, except an award issued in connection with an appealable matter under § 9901.922(f) or matters similar to those covered under 5 U.S.C. 4303 and 7512 arising under other personnel systems, which will be adjudicated under procedures described in § 9901.807(g) and (h). Such procedures are adopted in this subpart for these purposes.

(b) In addition to the bases contained in 5 U.S.C. 7122, exceptions may also be filed by the parties based on the arbitrator's failure to properly consider the Department's national security mission or to comply with applicable issuances and implementing issuances. The Board may take such action concerning the award as is consistent with this subpart.

(c) If no exception to an arbitrator's award is filed under paragraph (a) of this section during the 30-day period beginning on the date of such award, the award is final and binding. Either party will take the actions required by an arbitrator's final award. The award may include the payment of back pay (as provided under 5 U.S.C. 5596 and 5 CFR part 550, subpart H).

(d) Nothing in this section prevents the Board from determining its own jurisdiction without regard to whether any party has raised a jurisdictional issue.

#### **§ 9901.924 Official time.**

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this subpart will be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this section may not exceed the number of individuals designated as representing the Department for such purposes.

(b) Any activities performed by any employee relating to the internal business of the labor organization, including but not limited to the solicitation of membership, elections of

labor organization officials, and collection of dues, will be performed during the time the employee is in a nonduty status.

(c) Except as provided in paragraph (a) of this section, the Authority or the Board, as appropriate, will determine whether an employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority or the Board will be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(d) Except as provided in the preceding paragraphs of this section, any employee representing an exclusive representative or, in connection with any other matter covered by this subpart, any employee in an appropriate unit represented by an exclusive representative, will be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(e) Official time for representational activities will not extend to the representation of employees outside the representative's bargaining unit, except for multi-unit bargaining and/or bargaining above the level of recognition, in accordance with §§ 9901.918 and 9901.919 and mutual agreement of the agency and the exclusive representatives involved.

#### **§ 9901.925 Compilation and publication of data.**

(a) The Board will maintain a file of its proceedings.

(b) All files maintained under paragraph (a) of this section will be open to inspection and reproduction in accordance with 5 U.S.C. 552 and 552a. The Board will establish rules in consultation with the Department for maintaining and making available for inspection sensitive information.

#### **§ 9901.926 Regulations of the Board.**

The Department may issue initial interim rules for the operation of the Board and will consult with labor organizations granted national consultation rights on the rules. The Board will prescribe and publish rules for its operation in the **Federal Register**.

#### **§ 9901.927 Continuation of existing laws, recognitions, agreements, and procedures.**

(a) Except as otherwise provided by §§ 9901.905 or 9901.912, nothing contained in this subpart precludes the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or an agreement that is otherwise consistent with law, the regulations in this part and DoD or

Component issuances between the Department or a Component thereof and an exclusive representative of its employees, which is entered into before the effective date of this subpart, as determined under § 9901.102(b)(1).

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838 or any other Executive order, in

effect on the effective date of this subpart (as determined under § 9901.102(b)(1)), will remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this subpart or by implementing issuances or decisions issued pursuant to this subpart.

**§ 9901.928 Savings provisions.**

This subpart does not apply to grievances or other administrative

proceedings already pending on the date of coverage of this subpart, as determined under § 9901.102(b)(1). Any remedy that applies after the date of coverage under any provision of this part and that is in conflict with applicable provisions of this part is not enforceable.

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